

**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*

Minutes  
 March 2, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Jill Davis  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Mary Blanco  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Roger Wood  
 Anthony Young

Member not present:

Hon. Gerald Williams

Guests:

Hon. Steven McMurry  
 Theresa Barrett

Staff:

Mark Meltzer  
 Lorraine Nevarez  
 Tama Reily

**1. Call to Order; Introductions.** The Chair called the meeting to order at 10:05 a.m. and welcomed the members and guests to the inaugural meeting of this Committee. The Chair provided an overview of the objectives of the Committee, which include the submission of a report to the Arizona Judicial Council by December 2011.

The Chair advised that Judge Williams was absent because of military reserve duty, and that Judge Adam had a new judicial assignment that necessitated her resignation prior to the first meeting. Each Committee member then provided brief biographical information. The Chair inquired whether members should be added to the Committee. He noted that Judge Adam had considerable expertise on the subject of self-represented litigants. The members supported adding a member to replace Judge Adam. The Chair added that he would work hard to reach consensus among the members.

The Chair reviewed materials that were included in the members' notebooks, including A.O. 2011-13, and he reminded the members of the availability of documents on the Committee's webpage (<http://www.azcourts.gov/cscommittees/CivilRulesofProcedureforLJCourts.aspx>). The Chair reviewed proposed written rules for conducting Committee business, and a motion was then made:

**Motion RCiP.LJC 11-001:** That the proposed rules for conducting Committee business be adopted as proposed. The motion was seconded and discussed.

**Action on RCiP.LJC 11-001:** The motion passed by a unanimous vote of the members.

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**2. Roundtable discussion of the rules of civil procedure in limited jurisdiction courts in Arizona.** The members reviewed Arizona Revised Statutes § 22-211 concerning the application of the superior court rules of procedure in LJ courts. The members proceeded to a roundtable discussion of the strengths and weakness of the current rules. A summary of comments includes:

- There are many self-represented parties in LJ courts. It would promote consistency, equalize advantages, and reduce surprise if self-represented parties were aware of their rights and responsibilities under the rules.
- In cases with attorneys, fees may approach or exceed the amount in controversy, and this can lead to unhappy outcomes. Reducing the cost of litigation is desirable.
- Rules should have a plain meaning to the average person. It would also assist LJ judges if the rules had more clarity. Other goals should include uniformity, access, and education.
- Policy objectives of the rules such as promoting efficiency and achieving justice should be considered before drafting changes to the existing rules.
- Maricopa County Justice Courts have a “best practices” committee.
- Individual clerks have different areas of knowledge and levels of experience. Clerks cannot give legal advice, although clerks provide self represented litigants with handouts and checklists. Self-represented litigants frequently don’t read those materials thoroughly, and less written information might be more effective because it’s more likely to be read.
- Court websites can provide useful information for self-represented litigants in civil cases.
- The relatively new rules of procedure for eviction actions simplified the eviction process for all stakeholders, including landlords, tenants, and judges. That committee’s goal was to devise rules that were fair and that reduced confusion, and it now appears that the eviction rules have achieved that goal. The superior court rules of civil procedure apply in evictions only when they were specifically incorporated in the eviction rules.
- Evictions require an information sheet to be served with the complaint. Could an information sheet be provided with the complaint that’s served on a civil defendant? A suggestion was made that the sheet could include information about the consequences of a civil judgment.
- What documents should be attached to a complaint to give a defendant notice of the basis of a lawsuit; for example, what should be attached to a complaint for an unpaid credit card balance? Should essential documents be attached to a complaint or should they instead be attached to a subsequent filing, such as an application for entry of default?

- An organic approach should be used when creating rules so they are seen as a whole body. Other relevant rules could be cross-referenced in a rule. Rules should not be aspirations. Practice pointers should be in comments rather than in the rules.
- Some procedural rules are critical, and even self-represented litigants should be required to follow those rules. Rules ensure consistency.
- The majority of cases conclude with the entry of judgment by default. There should be focus on the fairness and due process of default procedures. If a defendant does file an answer it is sometimes cryptic and results in a judgment for plaintiff on the pleadings. There are very few jury trials, and trials don't present major issues concerning rules. Post-judgment proceedings present more rules issues. Litigants should be satisfied that the process was fair and not overly costly.
- The Legislature adopted § 22-211, and the Legislature could amend or repeal this statute. The Legislature should be made aware of the existence of this Committee, and it should be provided an opportunity to participate in the Committee's work.

The Chair thanked the members for their comments, and a break was then taken for lunch.

**3. RCiP.LJC workgroups.** Following the lunch break, the Chair reviewed a document entitled "workgroups and roadmap." RCiP.LJC will evaluate the existing rules of civil procedure in blocks. The preliminary block consisting of introductory Rules 1 and 2 was presented by staff in the afternoon.

Each of three remaining blocks of rules was assigned to one of three workgroups. It was noted that the first workgroup would report at the second Committee meeting on March 31, the next group at the third Committee meeting on April 20, and the final group at the fourth meeting. Each workgroup should be prepared to present to the Committee recommendations for draft rules within its block. The workgroups are as follows:

Workgroup #1: Commencement of the action, pleadings, and parties: rules 3 through 25, excluding rule 7 on motions and rule 16 on pretrial procedures. Workgroup #1 members are Judge Dickerson (Chair), Ms. Blanco, and Messrs. Hameroff, Klain, and Young.

Workgroup #2: Motions and pretrial procedures, depositions and discovery, trials: rules 7, 16, and 26 through 53. Workgroup #2 members are Judge Davis (Chair), Ms. Johnston, and Messrs. McKay and Wood.

Workgroup #3: Judgments, remedies, arbitration, and general provisions: rules 54 through 83. Workgroup #3 members are Judges Felix (Chair) and Williams, and Messrs. Hammerman, Rosenbaum, and Jones.

Each workgroup includes (a) a judicial member, (b) a member from a legal aid organization, and (c) representatives from Maricopa County, Pima County, and one other county.

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**4. Presentation regarding Rules 1 and 2, Arizona Rules of Civil Procedure.** Staff presented two proposed introductory rules for the Committee's consideration. Staff noted provisions in the Justice 2020 Strategic Agenda and in A.O. 2011-13 that mentioned simplifying rules and processes. Staff referred members to a 1994 Supreme Court committee on the effective use of juries that had included a similar concept, which was that instructions to the average juror should be in "clear and understandable language." Staff also referred to two articles in the *Arizona Attorney*, one in the February 2011 issue on drafting jury instructions that are comprehensible to lay persons; and the other in the November 2005 issue concerning Rule 1.

Five guidelines for simplification of LJ civil rules were suggested: 1) using common words and avoiding legal jargon; 2) using simple sentences; 3) identifying parties consistently; 4) including general provisions at the beginning; and 5) deleting rules with little or no application to LJ proceedings. Staff also compared the twelve page rules for magistrate courts in West Virginia with the existing 234 pages of the Arizona civil rules.

Staff also reviewed provisions in the Rules of Procedure for Eviction Actions, the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, the Arizona Rules of Protective Order Procedure, and pertinent provisions of Title 22 of the Arizona Revised Statutes concerning small claims.

Staff's draft Rules 1 and 2 were discussed by the members. Revisions to the draft rules were proposed, and these will be incorporated in a document that staff will provide with the materials for the next Committee meeting.

**5. The roadmap.** The Chair reviewed the roadmap for future meetings.

An issue was raised concerning which of the two options that were described in AO 2011-13 would be preferable: a new set of specialized rules of civil procedure for limited jurisdiction courts in Arizona, or amendments to the existing rules of civil procedure that would be applicable only in limited jurisdiction courts? It was the sense of the members that this was a decision that should be made at the inception of the Committee's work. The following motion was then made, seconded, and discussed.

**Motion RCiP.LJC 2011-002:** To adopt a freestanding, separate set of rules for justice court civil actions that may or may not incorporate the existing superior court rules of civil procedure, and for which there is not already a discreet set of procedural rules or statutes.

Members in favor of the motion believe that a separate set of rules for justice court civil actions would provide self-represented litigants with increased knowledge of their rights and responsibilities. This philosophy in part was incorporated in the eviction rules, and, like eviction cases, the majority of justice court civil cases do not proceed to trial. The eviction rules include safeguards that require landlords to give information to tenants at the inception of a case, and that require judicial officers to assure that due process is respected in the default process. LJ civil rules could adopt similar safeguards. Existing superior court rules could be cross-

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referenced in a new set of LJ rules to the extent that specific superior court rules were still useful in LJ proceedings. The text of certain existing rules could also be incorporated in the new LJ rules, although this would tend to increase the length of any new rules. Some of the existing rules rarely if ever get used in justice courts.

The opposing view was that dispensing with the existing rules would impair the predictability of outcomes. A new set of rules might eliminate the application of an established body of case law that has developed under the existing rules. Dispensing with the existing rules could also limit procedural options that are currently available to litigants. One option would be to simply annotate the existing rules with an indication of whether each rule does or does not apply in justice courts. Another option would be having a parallel numbering system for the superior and LJ rules, similar to what is used in federal rules (for example, Rule 56 of the federal civil rules and local district court civil Rule 56.1, both of which apply to summary judgment motions.)

**Action on RCiP.LJC 2011-002:** The motion carried, twelve in favor, one opposed.

The Chair noted that the scheduled May 26 meeting date falls before the Memorial Day weekend, and that the meeting date of June 16 conflicts with the State Bar Convention. After discussion, the members agreed to vacate these two dates, and in lieu to have a meeting on Thursday, June 9, 2011.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 2:35 p.m.

The next meeting date is **Thursday, March 31, 2011.**